

The Industrial Action (Important Public Services) Regulations 2016 – Trade Union Act 40 per cent ballot threshold

Department for Business, Energy and Industrial Strategy

RPC rating: fit for purpose

Description of proposal

The measure specifies the services in the fire, health, education, transport and border security sectors that will require at least 40 per cent of those entitled to vote in a ballot on industrial action to vote for industrial action before it can go ahead. The Department's previous impact assessment (IA) on the Trade Union Bill (now Act), which included a provision to introduce such a threshold, provided an indicative assessment of the impact. The present IA relates to the secondary legislation defining the services to be covered by the 40 per cent threshold and provides a more definitive assessment.

Impacts of proposal

Costs

The IA states that the measure is expected to affect up to 54 of the 157 trade unions listed in the Certification Officer's annual report. Based upon information obtained from unions in relation to the certification of trade union membership registers' proposal, the Department assumes that familiarisation with the measure will take one day of a general secretary and four other senior directors' time, at a total cost per union of £1,472, or £80,000 across 54 unions. The Department assumes that unions may also require legal advice. At a cost of £2,000 for each union, this results in a further cost of £108,000, making a total transition cost of £188,000. These estimates are broadly in line with those in the Trade Union (TU) Bill IA. In addition, it is expected that there will be a small ongoing cost of around £5,000 for unions to assess whether their ballots are covered by the 40 per cent threshold. Overall, the cost of the proposal is estimated at £0.2 million over ten years in present value terms.

Benefits

The main benefit is expected to be a reduction in the number of strikes in the sectors covered by the proposed legislation. The Department has identified 58 ballots (38 for strike and 20 for action short of strike) during the period 2010 to 2015 that would be likely to be covered by the 40 per cent threshold. The 40 per cent support threshold would have invalidated 15 ballots for strike action, and 7 ballots for action short of a strike. The Department, however, assumes that the measure will result in a 25 per cent increase in ballot turnout. This is in line with the TU Bill IA. Based upon analysis of previous ballots, the Department has also identified that the proportion of voters agreeing to strike action increases with turnout. With a further adjustment to allow for this, the Department estimates that the measure will reduce strikes by 5.4 per cent. The Department undertakes sensitivity analysis around this. The lower estimate is based upon the proportion of voters voting for strike action increasing in line with the increase in turnout. The higher estimate is based upon all of the additional votes being for industrial action.

Using data from the Labour Disputes Survey, which shows that the majority of large disputes last for only one day, the Department assumes that the 5.4 per cent reduction in the number of strikes translates into the same percentage reduction in working hours lost through strike action. This gives an estimated 88,000 working hours being saved each year. Using ONS data on output per worker and average wage rates in these sectors, the Department estimates a benefit to employers of £0.7 million each year, or £6.2 million over ten years in present value terms.

To obtain the benefit to business, the Department uses Labour Force Survey data on the proportion of trade union members who are private sector employees. This ranges from 88 per cent in transport to 0 per cent in Border Force and Fire Services, with an average of around 22 per cent. Applying these proportions gives an estimate of the benefit to business of £0.16 million each year. Taking account of the costs to trade unions above, the estimated equivalent annual net direct cost to business (EANDCB) is -£0.1 million.

Impact on small and micro businesses

The Department has provided a small and micro businesses assessment (SaMBA) (page 51). This explains that there are no data on the number of employees of the 54 trade unions potentially affected but provides a more general description of the proportion of trade unions with fewer than 50 employees and/or 10,000 members. The Department does not consider that an exemption for small businesses is justified. Among the reasons given are that costs are relatively small in comparison to

the wider economic benefit of the measure, and that a strike held by a smaller union could cause a significant impact on the wider economy.

Quality of submission

This measure will be a qualifying regulatory provision under the business impact target. The RPC verifies the estimated equivalent annual net direct cost to business (EANDCB) of -£0.1 million.

The IA would benefit from explaining in more detail why the analysis could not be refined further, such as making more use of the specific length and scale characteristics of the past strikes that may have been prevented by the proposal. However, given the data limitations and, especially, the limited direct impact of the proposal, we accept that the Department's approach is proportionate in this case.

The Department has provided information on the wider economic and social impacts of strikes in important public services (pages 15-19). This has informed its assessment of the non-monetised benefits of avoiding disruption resulting from industrial action (pages 44-45). The IA would benefit from expanding further its assessment of wider impacts. This could include consideration of potential effects on industrial relations and employee morale, and the possibility of increased unofficial industrial action.

The expected increase in turnout and associated increase in the proportion of employees voting for industrial action reduces the number of strikes averted by the proposal. The IA could be improved by addressing whether this reduction in benefit to business is a direct or indirect impact. The Department treats it as a direct impact, which slightly reduces the benefit of the proposal but with no material impact on the EANDCB.

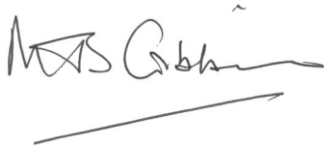
The IA would benefit from setting out the calculations involved in arriving at the estimated 5.4 per cent reduction in average working hours lost (page 38 of the IA).

Departmental assessment

Classification	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	-£0.1 million
Business net present value	£1.16 million
Societal net present value	£5.95 million

RPC assessment¹

Classification	Qualifying regulatory provision
EANDCB – RPC validated	-£0.1 million
Business impact target (BIT) score	-£0.5 million
Small and micro business assessment	Sufficient



Michael Gibbons CBE, Chairman

¹ For reporting purposes, the RPC validates EANDCB and BIT figures to the nearest £100,000.